

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.
* DECEMBER 5, 2023 *
BROOKLYN OFFICE

RTP:PP/DR
F. #2023R00675

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----- X

UNITED STATES OF AMERICA

- against -

ALEXANDER FIGLIOLIA, JR. and
KENNETH SUTHERLAND,

Defendants.

----- X

THE GRAND JURY CHARGES:

At all times relevant to this Indictment, unless otherwise indicated:

INTRODUCTION

1. Liberty Water and Sewer ("Liberty Water") was a plumbing company operating in Brooklyn, New York.
2. The defendants ALEXANDER FIGLIOLA, JR. and KENNETH SUTHERLAND were the owners of Liberty Water, which they operated as a partnership.
3. A partnership must file an annual information return to the Internal Revenue Service ("IRS") to report the income, deductions, gains, losses, and other financial information from its operations, but it does not pay income tax. Instead of paying income tax, the partnership "passes through" profits or losses to its partners and each partner reports their share of the partnership's profits or losses on their personal tax return. Accordingly, any expenses deducted by a partnership lessens a partner's individual tax burden because doing so reduces the profits of the partnership.

INDICTMENT

Cr. No. 23-CR-498
(T. 18, U.S.C., §§ 371, 2 and 3551 et seq.;
T. 21, U.S.C., § 853(p); T. 26, U.S.C.,
§ 7201; T. 31, U.S.C., §§ 5317(c)(1)(A)
and 5317(c)(1)(B))

Judge Orelia E. Merchant
Magistrate Judge Peggy Kuo

4. Between January 2017 and June 2020, the defendants ALEXANDER FIGLIOLA, JR. and KENNETH SUTHERLAND agreed to evade and did in fact evade paying personal income taxes. Specifically, FIGLIOLA, JR. and SUTHERLAND issued checks and wired money from Liberty Water's bank account to pay for personal expenses. The defendants classified these payments of their personal expenses as business expenses of Liberty Water, thereby reducing Liberty Water's profits and reducing the defendants' personal income tax burdens.

5. For example, the defendants ALEXANDER FIGLIOLA, JR. and KENNETH SUTHERLAND used Liberty Water funds to pay for more than \$1.75 million in personal credit card expenses, including home renovations, a family trip to Disney World, jewelry, clothing and veterinary expenses. These payments were classified as business expenses of Liberty Water and thereby reduced FIGLIOLA, JR.'s and SUTHERLAND's individual tax burdens.

6. As another example, the defendants ALEXANDER FIGLIOLA, JR. and KENNETH SUTHERLAND obtained a series of loans on their personal life insurance policies totaling more than \$2.8 million. FIGLIOLA, JR. and SUTHERLAND used the loan proceeds to pay personal expenses. FIGLIOLA, JR. and SUTHERLAND repaid the loans with Liberty Water funds, which they caused to be classified as business insurance payments on the partnership's tax return.

7. As another example, the defendant ALEXANDER FIGLIOLA, JR. issued more than \$4 million in checks from Liberty Water's bank account to a law firm for the payment of personal expenses, including the purchase of multiple properties and a yacht.

FIGLIOLIA, JR. improperly classified these personal expenses as business expenses of Liberty Water.

8. In total, the defendants ALEXANDER FIGLIOLA, JR. and KENNETH SUTHERLAND intentionally diverted approximately \$10,225,213 from Liberty Water between tax years 2017 and 2019 and used the diverted funds to pay for personal expenses. The payments were classified as deductible business expenses that reduced Liberty Water's profits and thereby FIGLIOLIA, JR.'s and SUTHERLAND's personal tax burdens. FIGLIOLIA, JR. and SUTHERLAND's scheme resulted in their knowingly and willfully evading the payment of approximately \$3,933,046 in federal taxes due and owing to the IRS.

COUNT ONE
(Conspiracy to Defraud the United States)

9. The allegations in paragraphs one through eight are realleged and incorporated as if fully set forth in this paragraph.

10. In or about between January 2017 and June 2020, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants ALEXANDER FIGLIOLA, JR. and KENNETH SUTHERLAND, together with others, did knowingly and willfully conspire to defraud the United States by impeding, impairing, obstructing and defeating the lawful Government functions of the Internal Revenue Service of the Department of the Treasury in the ascertainment, computation, assessment and collection of revenue, to wit: income taxes.

11. In furtherance of the conspiracy and to effect its objects, within the Eastern District of New York and elsewhere, the defendants ALEXANDER FIGLIOLA, JR. and KENNETH SUTHERLAND, together with others, did commit and cause the commission of, among others, the following:

OVERT ACTS

(a) On or about and between January 19, 2017, and April 7, 2017, FIGLIOLIA, JR. caused checks totaling approximately \$96,000 to be drawn against Liberty Water's bank account to pay his personal American Express credit card bills, including approximately \$11,562.53 in charges made by FIGLIOLIA, JR.'s wife for luxury home furniture. These payments were improperly deducted as business expenses on Liberty Water's partnership tax return.

(b) On or about July 14, 2017, FIGLIOLIA, JR. caused checks totaling approximately \$200,000 to be drawn against Liberty Water's bank account to fund the purchase of a home in Staten Island, New York. These checks were made payable to FIGLIOLIA, JR.'s personal attorneys, improperly categorized as legal expenses on Liberty Water's general ledger and deducted as business expenses on Liberty Water's partnership tax return.

(c) On or about and between September 27, 2017, and December 13, 2017, SUTHERLAND caused checks totaling approximately \$110,000 to be drawn against Liberty Water's bank account to pay his personal Citibank credit card bills, including approximately \$25,050 in charges made by SUTHERLAND and his wife for renovations made to a property owned by SUTHERLAND. These payments were improperly deducted as business expenses on Liberty Water's partnership tax return. SUTHERLAND did not pay personal taxes on this income.

(d) On or about July 5, 2018, SUTHERLAND caused a check in the amount of approximately \$152,000 to be drawn against Liberty Water's bank account to repay a loan in the amount of approximately \$150,111.22 that SUTHERLAND obtained from his insurance company. SUTHERLAND used the loan to pay personal expenses. The loan

repayment was improperly recorded as an insurance expense on Liberty Water's general ledger and deducted as business expenses on Liberty Water's partnership tax return.

(e) On or about December 30, 2019, FIGLIOLIA, JR. caused checks totaling approximately \$400,000 to be drawn against Liberty Water's bank account to repay a loan in the amount of approximately \$400,000 that FIGLIOLIA, JR. had obtained from his insurance company. FIGLIOLIA, JR. used the money for personal expenses. The loan repayment was improperly recorded as a business insurance expense on Liberty Water's general ledger and deducted as business expenses on Liberty Water's partnership tax return.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNTS TWO THROUGH SEVEN
(Tax Evasion)

12. The allegations in paragraphs one through eight are realleged and incorporated as if fully set forth in this paragraph.

13. On or about the dates set forth below, all dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants ALEXANDER FIGLIOLA, JR. and KENNETH SUTHERLAND, together with others, did willfully and knowingly attempt to evade and defeat a substantial personal income tax due and owing by them to the United States, by failing to pay personal income taxes to the IRS and by concealing and attempting to conceal from all proper officers of the United States their true income, as described below:

COUNT	DEFENDANT	TAX YEAR	APPROXIMATE DATE OF FILING	APPROXIMATE TRUE TAXABLE INCOME	APPROXIMATE ADDITIONAL TAX DUE AND OWING
TWO	FIGLIOLA, JR.	2017	June 27, 2018	\$2,659,776	\$820,045

COUNT	DEFENDANT	TAX YEAR	APPROXIMATE DATE OF FILING	APPROXIMATE TRUE TAXABLE INCOME	APPROXIMATE ADDITIONAL TAX DUE AND OWING
THREE	SUTHERLAND	2017	June 27, 2018	\$971,910	\$150,340
FOUR	FIGLIOLA, JR.	2018	August 14, 2019	\$3,076,057	\$818,042
FIVE	SUTHERLAND	2018	August 14, 2019	\$1,946,267	\$387,954
SIX	FIGLIOLA, JR.	2019	June 3, 2020	\$3,674,811	\$1,160,228
SEVEN	SUTHERLAND	2019	June 3, 2020	\$2,359,660	\$596,437

(Title 26, United States Code, Section 7201; Title 18, United States Code, Sections 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION

14. The United States hereby gives notice to the defendants that, upon their conviction of the offense charged in Count One, the government will seek forfeiture in accordance with Title 31, United States Code, Section 5317(c)(1)(A), which requires any person convicted of such offense to forfeit any property, real or personal, involved in such offense, or any property traceable to such property.

15. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 31, United States Code, Section 5317(c)(1)(B), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property described in this forfeiture allegation.

(Title 31, United States Code, Sections 5317(c)(1)(A) and 5317(c)(1)(B); Title 21, United States Code, Section 853(p))

A TRUE BILL


FOREPERSON


BREON PEACE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

F.#: 2023R00675
FORM DBD-34
JUN. 85

No.

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

ALEXANDER FIGLIOLA, JR. and KENNETH SUTHERLAND,

Defendants.

INDICTMENT

(T. 18, U.S.C., §§ 371, 2 and 3551 et seq.; T. 21, U.S.C., § 853(p); T. 26,
U.S.C., § 7201; T. 31, U.S.C., §§ 5317(c)(1)(A) and 5317(c)(1)(B))

A true bill.

Foreperson

Filed in open court this _____ day,

of _____ A.D. 20 _____

Clerk

Philip Pilmar and Dana Rehnquist, Assistant U.S. Attorneys (718) 254-7000